



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,414	01/22/2004	Timothy C. Poole	33101-2370	4908
7590	06/09/2006		EXAMINER [REDACTED]	PAYER, HWEI SIU CHOU
Gregor N. Neff, Esq. c/o Kramer Levin Naftalis & Frankel LLP 919 Third Avenue New York, NY 10022			ART UNIT [REDACTED]	PAPER NUMBER 3724

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

	Application No.	Applicant(s)
	10/762,414	POOLE ET AL.
	Examiner	Art Unit
	Hwei-Siu C. Payer	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on May 22, 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3 and 5-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

Detailed Action

The amendment filed on May 22, 2006 has been entered. Upon further consideration, the allowable subject matter of claim 4 has been withdrawn. Any inconvenience to the Application is regretted.

Claim Objection

Claim 3 is objected to because of the following informalities:

At line 14 of the claim, "adjacent" should read --in-- (note page 4 of the specification and Figs.1, 2 and 5).

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 102(b)

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wakefield (U.S. Patent No. 2,608,706).

Wakefield's device shows all the claimed structure. The statement of intended use (i.e. for separating pre-determined qualities of food from a food block) adds no structure to and is of no patentable import on the claimed cutter.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wentsel (U.S. Patent No. 2,948,064) in view of Wakefield (U.S. Patent No. 2,608,706).

Wentsel shows a food cutter substantially as claimed. The mere difference between Wentsel and the claimed invention resides in location of the cutting edge (5). Specifically, the cutting edge of the claimed invention affords a thrust cutting action by having the cutting edge extends transversely to a direction in which measurement marks on the body member are spaced from one another while Wentsel's cutting edge (5) extends longitudinally to the direction in which the measurement marks (6,7,8,9) are spaced from one another.

However, it is notoriously old and well known in the art to cut food block by thrust cutting action as evidenced by Wakefield which also shows measurement marks

measuring distances from the cutting edge (6) and indicating quantity measurements in the space between the marks and the cutting edge (see Fig.1).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to modify Wentsel by rearranging the cutting edge (5) in a transverse direction so that the measurement marks measuring distances from the cutting edge and indicating quantity measurements in the space between the marks and the cutting edge to facilitates a more effective measuring and a more powerful cutting action as taught by Wakefield.

Remarks

Applicant's arguments with respect to claims 1 and 5-10 have been considered but are moot in view of the new ground(s) of rejection.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone numbers for

the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

H Payer
June 1, 2006

Hui-Siu Payer

Hui-Siu Payer
Primary Examiner